

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CLAIRE C. HAGGARTY, individually and
on behalf of all others similarly situated,

Plaintiff,

vs.

STRYKER ORTHOPAEDICS (aka
STRYKER ORTHOPEDICS; aka
STRYKER ORTHOPEDICS, INC.);
HOWMEDICA OSTEONICS
CORPORATION; STRYKER
CORPORATION; and STRYKER SALES
CORPORATION,

Defendants.

CASE NO. 08-CV-1609-JSW

HON. JEFFREY S. WHITE

**CORRECTED STIPULATED PROTECTIVE
ORDER GOVERNING THE HANDLING OF
DISCOVERY AND OTHER DOCUMENTS**

The parties in the above-captioned action, Plaintiff CLAIRE C. HAGGARTY (“Plaintiff”), individually and on behalf of all others similarly situated, by and through her attorneys, and Defendants, STRYKER ORTHOPEDICS (aka STRYKER ORTHOPEDICS; aka STRYKER ORTHOPEDICS, INC.); HOWMEDICA OSTEONICS CORPORATION; STRYKER CORPORATION; and STRYKER SALES CORPORATION, hereinafter referred to collectively as “Stryker”, by and through its attorneys, do hereby stipulate to and agree that an order pursuant to Federal Rule of Civil Procedure 26(c) is necessary and hereby agree to the following protective order:

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in these actions are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order (the “Order”). The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends

only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1. Party: Any party to these actions, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

2.2. Disclosure or Discovery Material: All items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

2.3. “Confidential” Information or Items: Information (regardless of how generated, stored or maintained) or tangible things that qualify for protection under standards developed under F.R.Civ.P. 26(c).

2.4. “Highly Confidential – Attorneys’ Eyes Only” Information or Items: Extremely sensitive “Confidential Information or Items” whose disclosure to another Party or non-party would create a substantial risk of serious injury.

2.5. Receiving Party: A Party that receives Disclosure or Discovery Material from a Producing Party.

2.6. Producing Party: A Party or non-party that produces Disclosure or Discovery Material in this action.

2.7. Designating Party: A Party or non-party that designates information or items that it produces in disclosures or in responses to discovery as “Confidential” or as “Highly Confidential — Attorneys’ Eyes Only.”

2.8. Protected Material: Any Disclosure or Discovery Material that is designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

2.9. Outside Counsel: Attorneys who are not employees of a Party but who are retained to represent and have appeared for a Party in these actions.

2.10. House Counsel: Attorneys who are employees of a Party.

2.11. Counsel (without qualifier): Outside Counsel and House Counsel (as well as their support staffs).

2.12. Expert: A person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in these actions and who is not a past or a current employee of a Party or a current employee of a Party and who, at the time of retention, is not anticipated to become an employee, of a Party or a competitor of a Party. This definition includes a professional jury or trial consultant retained in connection with this litigation.

2.13. Professional Vendors: Persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or counsel to or in court or in other settings that might reveal Protected Material.

4. DURATION

Even after the termination of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. The Court shall retain jurisdiction to enforce the terms of the Order subsequent to entry of judgment or in any settlement of this action.

5. DESIGNATING PROTECTED MATERIAL

5.1. Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.1(a), below), or as otherwise stipulated or ordered,

1 material that qualifies for protection under this Order must be clearly so designated before the
2 material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) For information in documentary form (apart from transcripts of depositions or
5 other pretrial or trial proceedings), that the Producing Party affix the legend “CONFIDENTIAL”
6 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at the bottom of each page that
7 contains protected material. If only a portion or portions of the material on a page qualifies for
8 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
9 appropriate markings in the margins) and must specify, for each portion, the level of protection
10 being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
11 EYES ONLY”).

12 A Party or non-party that makes original documents or materials available for inspection
13 need not designate them for protection until after the inspecting Party has indicated which
14 material it would like copied and produced. During the inspection and before the designation, all
15 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
16 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
17 copied and produced, the Producing Party must determine which documents, or portions thereof,
18 qualify for protection under this Order, then, before producing the specified documents, the
19 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) at the top of each page that contains
21 Protected Material. If only a portion or portions of the material on a page qualifies for protection,
22 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
23 appropriate markings in the margins) and must specify, for each portion, the level of protection
24 being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
25 EYES ONLY”). Counsel for any Party may request that a Designating Party provide a
26 “CONFIDENTIAL” version of a particular document with the “HIGHLY CONFIDENTIAL
27 ATTORNEYS’ EYES ONLY” portions redacted, after which the Designating Party shall either
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1 produce such redacted copies, or advise the requesting party's Outside Counsel that it may make
2 such redacted copies.

3 (b) For testimony given in deposition or in other pretrial or trial proceedings, that the
4 Party or non-party offering or sponsoring the testimony identify on the record, before the close of
5 the deposition, hearing, or other proceeding, all protected testimony, and further specify any
6 portions of the testimony that qualify as "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES
7 ONLY." When it is impractical to identify separately each portion of testimony that is entitled to
8 protection, and when it appears that substantial portions of the testimony may qualify for
9 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the
10 record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify
11 the specific portions of the testimony as to which protection is sought and to specify the level of
12 protection being asserted ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
13 EYES ONLY"). Only those portions of the testimony that are appropriately designated for
14 protection within the 20 days shall be covered by the provisions of this Stipulated Protective
15 Order.

16 Transcript pages and exhibits containing Protected Material must be separately bound by
17 the court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL" or
18 "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY," as instructed by the Party or
19 nonparty offering or sponsoring the witness or presenting the testimony and may not be disclosed
20 to anyone except as permitted under this Stipulated Protective Order.

21 (c) For information produced in some form other than documentary, and for any other
22 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
23 or containers in which the information or item is stored the legend "CONFIDENTIAL" or
24 "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY." If only portions of the
25 information or item warrant protection, the Producing Party, to the extent practicable, shall
26 identify the protected portions, specifying whether they qualify as "Confidential" or as "Highly
27 Confidential — Attorneys' Eyes Only."
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5.2. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items as “Confidential” or “Highly Confidential — Attorneys’ Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. If material is appropriately designated as “Confidential” or “Highly Confidential — Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party, on timely notification of the designation, must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1. Timing of Challenges. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2. Meet and Confer. A Party that elects to initiate a challenge to a Designating Party’s confidentiality designation must do so in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel for the Designating Party. In conferring, the challenging party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change is offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first.

6.3. Judicial Intervention. A Party that elects to press a challenge to a confidentiality designation after considering the justification offered by the Designating Party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) challenging the designation that identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet-and-confer requirements imposed in the preceding

1 paragraph and that sets forth with specificity the justification for the confidentiality designation
2 that was given by the Designating Party in the meet and confer dialogue.

3 The burden of persuasion in any such challenge proceeding shall be on the Designating
4 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
5 question the level of protection to which it is entitled under the Designating Party's designation.

6 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

7 7.1. Basic Principles. A Receiving Party may use Protected Material that is disclosed or
8 produced by another Party or by a non-party in connection with these cases only for prosecuting,
9 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only
10 to the categories of persons and under the conditions described in this Order. When the litigation
11 has been terminated, a Receiving Party must comply with the provisions of section 11, below
12 (FINAL DISPOSITION).

13 Protected Material must be stored and maintained by a Receiving Party at a location and
14 in a secure manner that ensures that access is limited to the persons authorized under this Order.

15 7.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
16 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
17 disclose any information or item designated CONFIDENTIAL only to:

18 (a) Counsel in this action, as well as employees of that Counsel to whom it is reasonably
19 necessary to disclose the information for this litigation;

20 (b) the officers, directors, and employees (including House Counsel) of the Receiving
21 Party to whom disclosure is reasonably necessary for this litigation;

22 (c) Experts (as defined in this Order) and their staffs to whom disclosure is reasonably
23 necessary for this litigation and who have signed the "Agreement to Be Bound by Protective
24 Order" (Exhibit A);

25 (d) the Court and its personnel;

26 (e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably
27 necessary for this litigation;

(f) during their depositions or at hearings, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A). Witnesses shall not be permitted to retain copies of CONFIDENTIAL materials or exhibits; and

(g) the author, recipient, or original source of the document or Protected Material within it.

7.3. Disclosure of “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY” only to:

(a) Counsel in this action, as well as employees of that Counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4, below, have been followed;

(c) the Court and its personnel;

(d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(e) during their depositions or at hearings, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A). Witnesses shall not be permitted to retain copies of HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY materials or exhibits; and

(f) the author, recipient, or original source of the document or Protected Material within it.

7.4 Procedure for Disclosure of “Highly Confidential – Attorneys’ Eyes Only” Litigation Material

(a) Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party that seeks to disclose to an “Expert” (as defined by this Order) any

1 Litigation Material that has been designated “Highly Confidential - Attorneys’ Eyes Only” first
 2 must make a written request to the Designating Party that (1) identifies the specific “Highly
 3 Confidential” information that the Receiving Party seeks permission to disclose to the Expert, (2)
 4 sets forth the full name of the Expert and the city and state of his or her primary residence, (3)
 5 attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5)
 6 identifies each person or entity from whom the Expert has received compensation for work in his
 7 or her areas of expertise or to whom the expert has provided professional services at any time
 8 during the preceding five years, and (6) identifies (by name and number of the case, filing date
 9 and location of court) any litigation in connection with which the Expert has provided any
 10 professional services during the preceding five years.

11 (b) A Party that provides the notice and information specified in the preceding paragraph
 12 may disclose the subject Protected Material to the identified Expert unless, within seven court
 13 days of delivery of the notice (the “Notice Period”), the Party receives a written objection from
 14 the Designating Party. Any such objection must set forth in detail the grounds on which it is
 15 based. During the Notice Period, no disclosure of the subject Protected Materials may be made to
 16 the Expert.

17 (c) A Party that receives a timely written objection must meet and confer with the
 18 Designating Party to try to resolve the matter by agreement. If no agreement is reached, the Party
 19 seeking to make the disclosure to the Expert may file a motion seeking permission from the Court
 20 to do so. Any such motion must set forth in details the reasons why disclosure to the Expert is
 21 reasonably necessary. Any application or motion brought pursuant to this paragraph must be
 22 made in strict compliance with L. Civ. R. 37.

23 (d) In any such proceeding, the Party opposing disclosure to the Expert shall bear the
 24 burden of proving that the risk of harm that the disclosure would entail outweighs the Receiving
 25 Party’s asserted need to disclose the Protected Materials to its Expert.

26 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
 27 **OTHER LITIGATION**

1 If a Receiving Party is served with a subpoena or an order issued in other litigation that
 2 would compel disclosure of any information or items designated in these actions as
 3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY,” the
 4 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately
 5 and in no event more than three court days after receiving the subpoena or order. Such
 6 notification must include a copy of the subpoena or court order. The Receiving Party also must
 7 immediately inform in writing the Party who caused the subpoena or order to issue in the other
 8 litigation that some or all the material covered by the subpoena or order is the subject of this
 9 Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated
 10 Protective Order promptly to the Party in the other action that caused the subpoena or order to
 11 issue.

12 The purpose of imposing these duties is to alert the interested parties to the existence of
 13 this Order and to afford the Designating Party in this case an opportunity to try to protect its
 14 confidentiality interests in the court from which the subpoena or order issued. The Designating
 15 Party shall bear the burdens and the expenses of seeking protection in that court of its confidential
 16 material — and nothing in these provisions should be construed as authorizing or encouraging a
 17 Receiving Party in this action to disobey a lawful directive from another court.

18 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

19 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 20 Material to any person or in any circumstance not authorized under this Stipulated Protective
 21 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
 22 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)
 23 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
 24 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to
 25 Be Bound” that is attached hereto as Exhibit A.

26 **10. FILING PROTECTED MATERIAL**

27 Without written permission from the Designating Party or a court order secured after
 28 appropriate notice to all interested persons, a Party may not file in the public record in these

actions any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. If the Court grants a party's motion to file a document under seal, that party must file a public version of the document with only Protected Material redacted.

11. FINAL DISPOSITION

Unless otherwise ordered or agreed in writing by the Producing Party, within sixty (60) days after the final termination of these actions, each Receiving Party must return all Protected Material to the Producing Party. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the Protected Material. With permission in writing from the Designating Party, the Receiving Party may destroy some or all of the Protected Material instead of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty-day deadline that identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

12. PRODUCTION OF PRIVILEGED INFORMATION

The inadvertent (i.e., unintentional) production of any privileged material shall not be deemed a waiver or impairment of any claim of privilege with respect to that material, including, but not limited to, the attorney-client privilege and/or work-product doctrine. If a party inadvertently produces information that it considers to be protected from disclosure by the attorney-client privilege, the work product doctrine, or any other privilege or similar legal protection, in whole or in part, the producing party may retrieve such information as follows:

(a) Within ten (10) business days of the date of discovery by a party of the inadvertent production, the party asserting that an inadvertent production has occurred must give written notice to all other parties that the party claims the information, in whole or in part, is privileged or protected material; in addition, the notice must state the nature of the privilege or protection and the basis for asserting it; and

(b) Upon receipt of such notice, any party who has received the produced document or material shall promptly return all copies to the party asserting inadvertent production. In the event only part of a document is claimed to be privileged or protected, the party asserting inadvertent production shall furnish to the other parties who have received the document a redacted copy of such document, removing only the part(s) thereof claimed to be privileged or protected, together with such written notice. Any party who has received the produced documents or material may contest the claim of privilege or protection by filing a motion contesting the claim within ten (10) business days of receiving notice under subparagraph (a) above. During the pendency of such motion, the receiving party need not return all copies of the produced documents or material to the party asserting inadvertent production; however the receiving party may not use or disclose such information for any purpose other than prosecution of the motion challenging the privilege or protection claim.

Nothing in this Agreement is intended to alter any Counsel's ethical obligations including those concerning the treatment of inadvertently produced privileged materials.

13. MISCELLANEOUS

13.1. Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

13.2. Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

1 **IT IS SO STIPULATED.**

2 DATED: February 16, 2010

COTCHETT, PITRE & McCARTHY

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4 By: /s/ Niki B. Okcu

Niki B. Okcu

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6 Attorneys for Plaintiff Claire C. Haggarty

7 DATED: February 16, 2010

FARELLA BRAUN + MARTEL LLP

8
9 By: /s/ Monali S. Sheth

Monali S. Sheth

10 Attorneys for Defendants Stryker Orthopaedics (aka
11 Stryker Orthopedics; aka Stryker Orthopedics, Inc.);
12 Howmedica Osteonics Corporation; Stryker
Corporation; and Stryker Sales Corporation

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14 **PURSUANT TO THE ABOVE STIPULATION, IT IS SO ORDERED.**

15 DATED: February 17, 2010

16 By: 

Hon. Jeffrey S. White

17 United States District Court Judge

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EXHIBIT A

1 EXHIBIT A2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____ [print or type full address],
 4 declare under penalty of perjury that I have read in its entirety and understand the Stipulated
 5 Protective Order that was issued by the United States District Court for the Northern District of
 6 California on _____ [insert date] in the case of Haggarty v. Stryker Orthopaedics, et al., No.
 7 08-CV-1609-JSW. I agree to comply with and be bound by all the terms of this Stipulated
 8 Protective Order and I understand and acknowledge that failure to so comply could expose me to
 9 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in
 10 any manner any information or item that is subject to this Stipulated Protective Order to any
 11 person or entity except in strict compliance with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the
 13 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
 14 Order, even if such enforcement proceedings occur after termination of this action.

15 I hereby appoint _____ [print or type full name] of
 16 _____ [print or type full address and telephone number] as my California
 17 agent for service of process in connection with this action or any proceedings related to
 18 enforcement of this Stipulated Protective Order.

19 Date: _____

20 City and State where sworn and signed: _____

21 Printed name: _____

22 Signature: _____